



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF T-O-O-

DATE: OCT. 1, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an environmental health scientist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met. See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, “[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate.” The Petitioner did not execute this required document for the petition, and therefore he has not properly applied for the national interest waiver. For this reason, the Petitioner has not established eligibility for the benefit sought. Furthermore, as discussed below, we find the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he seeks to continue his research aimed at understanding [REDACTED] and developing measures “to detect, monitor, and reduce human exposure” to [REDACTED] [REDACTED].⁴ He explained that his proposed work focuses on identifying new [REDACTED] “the risks they pose to communities, providing policy makers and other researchers with invaluable data upon which to work. [The Petitioner] is also working on producing a more effective, efficient, and economically-responsible method for monitoring [REDACTED] within U.S. cities.” In addition, the Petitioner stated that his proposed research involves demonstrating “the feasibility of tactically deploying . . . [REDACTED] thus providing a more accurate estimate of [REDACTED] within that city.” We find that the Petitioner’s proposed [REDACTED] research aimed at improving public health has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. The record includes letters of support discussing how the Petitioner’s proposed research stands to improve air quality in U.S. communities. For instance, [REDACTED] [REDACTED], associate professor of environmental and occupational health sciences at [REDACTED] asserted that the Petitioner’s proposed “work will lead to advances in identifying new admission sources at the community level and gauging the risks they pose.” In addition, [REDACTED] director of the

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner received a Master of Health Science degree in Occupational and Environmental Hygiene from [REDACTED]

⁴ At the time of filing, the Petitioner was a graduate research assistant at the University of [REDACTED] [REDACTED] As he is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we consider information about his research position to illustrate the capacity in which he intends to work.

[redacted] indicated that the Petitioner's research aimed at "understanding how to measure and control human exposure to energy-related pollutants" is "widely regarded as vital to our national priority." Furthermore, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications for the field, as the results are disseminated to others in the field through scientific journals and reports. As the Petitioner has documented both the substantial merit and national importance of his proposed research, we find that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his curriculum vitae, academic credentials, American Industrial Hygiene Foundation (AIHF) scholarships, master's thesis, and published work. The Petitioner also offered a May 2018 letter from the [redacted] providing him access to that city's [redacted] stations for his Ph.D. research project and reference letters discussing his graduate research activities at [redacted] and [redacted].⁵

The Petitioner contends that his academic qualifications, research experience, and support from [redacted] indicate that he is well positioned to advance his proposed endeavor. In letters supporting the petition, several of the Petitioner's former colleagues discussed his prior research aimed at [redacted] methods. For example, [redacted], a senior reservoir engineer at [redacted] noted that the Petitioner worked as an intern for that company, and that his paper, entitled '[redacted]' was included as a reference in the [redacted]. The Petitioner, however, has not presented evidence illustrating the significance of inclusion in this database, or establishing that his research has been implemented, utilized, or applauded by those viewing it.

In addition, [redacted] a professor at [redacted] stated that the Petitioner's work "compared new methods for assessing the concentrations [redacted] to standard methods to determine the most accurate direct method of testing [redacted] on such surfaces." [redacted] asserted that "the [redacted] protocol developed and validated by [the Petitioner] has been adopted as standard practice by at least one multinational [redacted] company," but the record does not indicate that the Petitioner's testing protocol stands to be utilized beyond this single company.

Furthermore, with respect to the Petitioner's Ph.D. dissertation project addressing community [redacted] asserted that this project seeks to assess whether [redacted] are sufficiently accurate for measuring [redacted] at locations around the monitoring sites to obtain a more complete picture of the actual [redacted] within a city. If this is demonstrated, valuable new research can be envisioned at the local community level." Similarly, [redacted] assistant professor at [redacted] explained that the Petitioner's Ph.D. work involves "evaluation of [redacted] in work places and community settings. This topic is very important to understand environmental disparities in disadvantaged U.S. communities." While [redacted] and [redacted] discuss the potential importance of the Petitioner's [redacted] research, the evidence does not show a record

⁵ We discuss only a sampling of these letters, but have reviewed and considered each one.

of success or a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong.

Regarding his two AIHF scholarships to attend [REDACTED] the Petitioner provided screenshots from AIHF's website identifying him as a recipient, but did not offer the criteria for receiving these scholarships. Nonetheless, he has not demonstrated that receiving these academic scholarships represents a record of success in his field or is otherwise an indication that he is well positioned to advance [REDACTED] research.

The record demonstrates that the Petitioner has conducted, published, and presented research during his academic career. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his or her proposed research. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner has not shown that his research has been frequently cited by independent scientists or otherwise served as an impetus for progress in the field, that it has affected [REDACTED] practices, or that it has generated substantial positive discourse in the broader environmental health science community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in his area of research. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his education, research skills and accomplishments, and the importance of his field. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

Matter of T-O-O-

ORDER: The appeal is dismissed.

Cite as *Matter of T-O-O-*, ID# 4288292 (AAO Oct. 1, 2019)